EB-2015-0166
EB-2015-0175

ONTARIO ENERGY BOARD

IN THE MATTER OF the Ontario Energy Board Act, 1998, S.O. 1998, c.15 (Schedule B) s.36;

AND IN THE MATTER OF an Application by Union Gas Limited for an order or orders pre-approving the cost consequences associated with one long-term natural gas transportation contract.

AND IN THE MATTER OF an Application by Enbridge Gas Distribution Inc. for an Order or Orders Pre-Approving the Cost Consequences associated with a Long-Term Natural Gas Transportation Contract

Final Submissions

Of

The Association of Power Producers of Ontario

November 26, 2015

Introduction

1. The Association of Power Producers of Ontario (**"APPrO"**) is a non-profit organization representing more than one hundred (100) companies involved in the generation of electricity and energy storage in Ontario. APPrO members produce power from co-generation, hydro, gas, nuclear, wind, and solar energy, waste wood and other sources. APPrO's members produce the vast majority of the electricity made in Ontario and own and operate power generation capacity in the province. APPrO's membership includes generators, marketers, contractors, equipment suppliers, consultants, local distribution companies, fuel suppliers, service providers and financiers. APPrO's goal is to facilitate an economically and environmentally sustainable electricity sector in Ontario that supports the business interests of electricity generators, ratepayers and the provincial economy.

2. Union Gas Limited ("**Union**") filed an application dated May 28, 2015 seeking pre-approval of the cost consequences of a long term (15 year term) transportation contract for 150,000 decatherms per day ("**Dth/d**")[1] with NEXUS Gas Transmission ("**NEXUS**") commencing November 1, 2017 (EB-2015-0166). Union's total expected cost of this transportation contract is approximately US$715 million.[2]

3. Similarly, Enbridge Gas Distribution Inc. ("**Enbridge**") filed an application dated June 5, 2015 also seeking pre-approval of the cost consequences of a long term (15 year term) transportation contract for 110,000 Dth/d with NEXUS (EB-2015-0175). The total expected cost of this transportation contract is approximately US$420 million.[3] Enbridge has noted that its precedent agreement with NEXUS provides Enbridge the option to increase its capacity from 110,000 Dth/d to

[1] EB-2015-0166 Application paragraph 5
[2] Ibid.
[3] Ibid.

150,000 Dth/d. However Enbridge is not currently seeking pre-approval of the cost consequences of this additional capacity should it chose to exercise its option.[4]

Summary Position

4. APPrO believes that the Board should pre-approve the cost consequences of the transportation arrangements of Union and Enbridge for their respective transportation capacities on the greenfield portion of the NEXUS pipeline between Kensington and Willow Run (the "Greenfield Portion").

5. For the Union Contract, this pre-approval of the Greenfield Portion should, however, exclude the portion of the NEXUS contract costs associated with the transportation capacity on the existing DTE system between Willow Run and the St. Clair interconnection. APPrO submits that the Union contract pre-approval should also exclude the 15% potential rate increase associated with the capital cost tracking mechanism.

6. The Union 15 year costs associated with the Greenfield Portion of the NEXUS contract, excluding the capital cost rate tracker are estimated to be US$521.5 million.[5]

7. For the Enbridge Contract, the pre-approval should similarly exclude that portion of the NEXUS contract costs for transportation capacity on the existing DTE system between Willow Run and Milford. Enbridge has not requested pre-approval of the any potential higher rate from the capital cost tracking mechanism.

8. The Enbridge 15 year costs associated with the Greenfield Portion of the NEXUS contract are estimated to be US$391.5 million.[6]

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[4] Transcript Volume 2 page 105
[5] As calculated herein, see paragraph 13
[6] As calculated herein, see paragraph 15

Background

9. The NEXUS pipeline is a new pipeline being developed that is proposed to provide 1.5 billion cubic feet per day ("**bcfd**")[7] of transportation service from Kensington Ohio, to Dawn and other US Midwest markets.[8] Figure 1 illustrates the route of this proposed pipeline. The Greenfield Portion of the pipeline between Kensington and Willow Run is a greenfield pipeline and is approximately 400 km in length.[9]

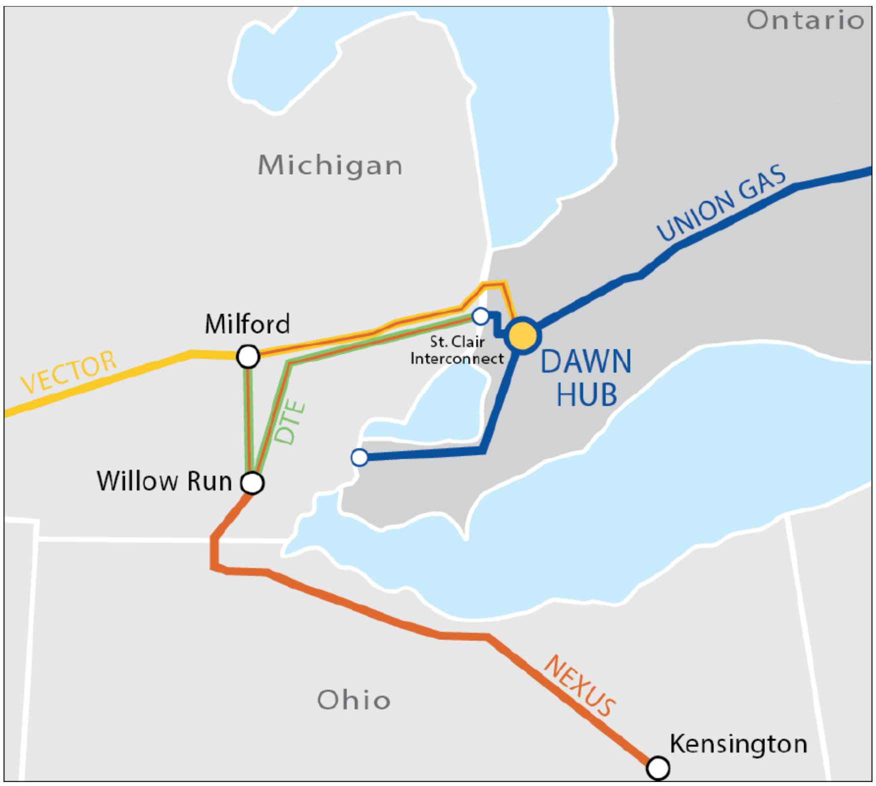

Figure 1. The NEXUS Pipeline Route.[10]

10. In order to provide additional flexibility, NEXUS has obtained capacity arrangements with the DTE/Michcon ("**DTE**") pipeline and the Vector pipeline to

[7] EB-2015-0166 Exhibit A Section 3
[8] EB-2015-0166 Exhibit A Section 3
[9] EB-2015-0166 Exhibit A page 14
[10] EB-2015-0166 Figure 3-2

transport gas transported by NEXUS to downstream markets between Chicago and Dawn. DTE and Vector are existing pipeline systems.

11. Union's contract with NEXUS provides for NEXUS to receive the gas at Kensington and re-deliver the gas to the interconnection between DTE and the St. Clair interconnection, from which Union will transport the gas to Dawn on its own pipeline system.[11]

12. Enbridge's contract path also provides for NEXUS receive the gas at Kensington and transport it to Milford, where Enbridge will use a restructured Vector contract to subsequently transport the gas to Dawn.[12]

13. The NEXUS daily reservation rate attributable to Union (Kensington to St. Clair) is US$0.77/Dth. This rate consists of a rate of US$0.635 for the Greenfield Portion and a further US$0.135/Dth on the DTE system.[13] The Greenfield Portion of the rate is subject to a capital cost tracking mechanism that could result in an adjustment to the final rate of up to +/-15%. The final rate paid would increase or decrease by the same percentage that the final capital costs change from the proposed US$2.019 billion, subject to a maximum increase or decrease of 15%. Union indicates that the upper limit of the total rate after applying the potential 15% capital tracker is US$0.87/Dth.[14]

14. Union indicates the total 15 year costs for the capacity inclusive of a 15% higher rate due to the capital cost tracking mechanism is US$715.[15] The 15 year costs, exclusive of any effects of the capital cost tracking mechanism, associated with the Greenfield Portion of the NEXUS capacity are therefore, by calculation, approximately US$521.5 million (US$0.635 X 150,000 X 365 X 15).

[11] EB-2015-0166 Exhibit A page 28
[12] EB-2015-0175 Exhibit A Tab 3 Schedule 1 page 32
[13] EB-2015-0166 Exhibit A page 43
[14] EB-2015-0166/EB-2015-0175 Exhibit B.T1.VECC.7
[15] EB-2015-0166 Application paragraph 5

15. The NEXUS daily reservation rate attributable to Enbridge (Kensington to Milford) is US$0.70/Dth. The Greenfield Portion of this rate is US$0.65/Dth.[16] Enbridge has a slightly higher rate than Union on the Greenfield Portion of NEXUS as Enbridge's volumes do not quality as large enough to be eligible for the reduced anchor shipper rate. As with Union's rate, the Greenfield Portion of Enbridge's final rate would increase or decrease by the same percentage that the final capital costs change from the proposed US$2.019 billion, subject to a maximum increase or decrease of 15%. The total 15 year costs for Enbridge's contract are approximately US$421.6 million[17] (US$0.70 Dth/d X 110,000 Dth X 365 days X 15). The 15 year costs associated for the Greenfield Portion of the NEXUS capacity are therefore, by calculation, approximately US$391.5 million (US$0.65/Dth X 110,000 Dth/d X 365 days X 15).

16. The Appalachian basin generally consists of gas supply from the Marcellus and Utica formations. The NEXUS pipeline will generally target Utica gas supplies at Kensington, but with other upstream pipeline connections, Marcellus gas supplies can also be accessed[18]. The Appalachian basin is an increasing important supply of natural gas to North America. Union indicated that the NEXUS pipeline will directly access this supply basin providing that "*[t]he NEXUS project is designed to transport supplies of Appalachian shale gas production, including Marcellus and Utica shale gas production.*" [19] Mr Isherwood also outlined the relative size of the Appalachian Basin and indicated that Union should have access to it, stating: "*[t]his basin is going to be bigger than WCSB, and I think it's important Ontario gets adequate access to it.*" [20]

[16] EB-2015-0175 Exhibit A Tab 3 Schedule 1 page 19
[17] EB-2015-0175 Exhibit A Tab 2 Schedule 1 page 2
[18] Transcript Volume 3 pages 1-16
[19] EB-2015-0166 Exhibit A page 1
[20] Transcript Volume 2 page 110

OEB LTC Filing Guidelines

17. The Board's determination of this matter is supported by its general jurisdiction over rates set out in section 36 of the *Ontario Energy Board Act, 1998,* (the "Act") as amended, and the specific guidance that it has developed in the Filing Guidelines for Pre-Approval of Long-Term Natural Gas Supply and/or Upstream Transportation Contracts (the "LTC Filing Guidelines").[21] It is noteworthy that the Board is not limited to a binary decision on pre-approval of costs. It has the discretion to determine not only *if* costs should be pre-approved, but also *what* costs that should be pre-approved.

18. In developing the LTC Filing Guidelines, the Board did not restrict the criteria that would be used to pre-approve the costs flowing from long term gas supply or transportation contracts, but the Board did indicate that:

> *The Board believes that applications for* ***pre-approval of the cost consequences of long-term contracts should be limited to those that support the development of new natural gas infrastructure****. The Board does not believe that the pre-approval process should be used for the natural gas utility's ("utility") normal day-to-day contracting, renewals of existing contracts and other long-term contracts that are not related to new natural gas infrastructure. These contracts should continue to be addressed in the utility's rate proceedings.*[22] (Emphasis added).

19. APPrO therefore submits that, consistent with the LTC Filing Guidelines, the Board should limit any and all pre-approvals of the Union and Enbridge long term contracts with NEXUS to the portions of the contracts relating to new infrastructure, and expressly require that any and all transportation contract costs that it pre-approves will result in new infrastructure being developed.

[21] http://www.ontarioenergyboard.ca/oeb/_Documents/EB-2008-0280/letter_LTCGuidelines_20090423.pdf
[22] EB-2008-0280 Board Letter dated April 23, 2009 page 3

20. The Board's LTC Filing Guidelines provide for specific filing requirements that help inform the Board in exercising its discretion to determine whether pre-approval of any or all long term transportation costs is appropriate. These filing requirements,[23] among other things, require the applicants to provide information on: (A) needs, costs and benefits; (B) contract diversity; (C) risk assessment; and (D) other considerations. APPrO therefore submits that each of these factors should therefore be considered by the Board in determining what, if any, Union and Enbridge NEXUS contract costs should be pre-approved and the appropriate levels of such pre-approved costs.

<u>Discussion</u>

APPrO's submissions are intended to assist the Board with its consideration of the above-mentioned issues on the pre-approval of the NEXUS contract amounts and are organized as follows:

(i) Will Pre-Approval of the Costs Result in New Infrastructure Being Developed?
(ii) What is the appropriate amount of pre-approved costs in light of the (A) needs, costs and benefits; (B) contract diversity; (C) risk assessment; and (D) other considerations.

(i) Will Pre-Approval of the Costs Result in New Infrastructure Being Developed?

21. Based on the information in this proceeding the NEXUS project will proceed, and new infrastructure will be developed (subject to NEXUS obtaining the required FERC and other required authorizations) if pre-approval of the cost consequences is granted. This is illustrated in Union's response to APPrO.1:

> *The level of shipper commitment that NEXUS has received to date is sufficient for the project to move forward. The volumes from the various producers and LDCs who have executed Precedent Agreements have allowed NEXUS to advance the project and submit its FERC prefiling. Should certain Precedent Agreement holders not be*

[23] EB-2008-0280 Board Letter dated April 23, 2009 Attachment A

able to fulfill their obligations and satisfy their respective conditions precedent, and therefore drop from the project, there is a risk that the project would no longer move forward. That minimum level is not known to Union and would be up to the sole discretion of the project proponents.[24]

22. It does not appear that Union will procced with the NEXUS transportation arrangements absent preapproval of the costs. In its Argument in Chief, Union indicates that:

…in the absence of pre-approval of the NEXUS Contract, ratepayers will be left with the incalculable risk and uncertainty as to whether Appalachian shale gas will be available to Ontario ratepayers at comparable quantity with as favourable contractual terms and pricing in the future[25.]

23. Furthermore in Staff.17 Union indicates that:

Finally, without pre-approval and the assurance that the NEXUS project will move forward, the Dawn Hub and Ontario consumers would miss an opportunity to gain significant access to Marcellus and Utica production as well as the accompanying benefits of increased choice, market liquidity at Dawn, and diversity and security of supply.[26]

24. Absent pre-approval of the costs of the their NEXUS contracts, Enbridge indicated that it would continue to use its Vector contracts to supply gas from Chicago:

MR. QUINN: Now, I understand your default position, your contingency position, in the event that you do not go forward with this NEXUS project then would be to continue to use that capacity from Chicago to supplement your gas supply plan?

MR. LeBLANC: Certainly in the short-term and perhaps long-term, but, yeah, certainly it is -- it would be our, you know, our initial fall-back position would be to continue with Chicago supply.[27]

25. It is not clear that the NEXUS pipeline will be constructed if the cost consequences of the Union and Enbridge contracts are not approved. The

[24] EB-2015-0166/EB-2015-0175 Exhibit B.T1.Union.APPrO.1
[25] Union Argument in Chief page 2
[26] EB-2015-0166/EB-2015-0175 Exhibit B.T2.Union.Staff.17
[27] Transcript Volume 3 page 27

remaining contract commitments to NEXUS may not be sufficient for NEXUS to proceed. Even if NEXUS is constructed, the remaining shippers on NEXUS will not necessarily deliver any gas to Dawn. These shippers will seek the highest valued markets in the between Chicago and Dawn.[28]

26. APPrO concludes that Union and Enbridge will not contract for the stated capacity on NEXUS absent pre-approval of the cost consequences of the transportation contracts. This increases the risk that NEXUS will not be constructed absent the commitment from these contracts, and system sales customers may not have access to the benefits offered from accessing gas from the Appalachian Basin.

(ii) What is the appropriate amount of pre-approved costs in light of the (A) needs, costs and benefits; (B) contract diversity; (C) risk assessment; (D) other considerations; and (E) exclusions from the appropriate level of costs that should be pre-approved.

A. Needs, Costs, and Benefits

27. It is reasonable to conclude that both Union and Enbridge have the **need** to contract for additional supply. In Union's case, the transportation will be used to replace a similar amount of more expensive Alliance/Vector and TransCanada pipeline capacity.[29] Union has indicated that even with this contract it has a further 150,000 GJ/d of uncommitted supply requirements.[30] In Enbridge's case, the NEXUS supplies will replace supplies currently acquired at Chicago and transported on Vector.[31] These utilities have sufficient demand to support these transportation agreements. Furthermore, if at some time in the future there is a reduction in demand, Union and Enbridge have sufficient contract flexibility in their portfolios to continue to allow full utilization of their NEXUS contracts.

[28] Transcript Volume 1 pages 78-79
[29] EB-2015-0166 Exhibit A pages 30 and 40
[30] Transcript Volume page 32
[31] EB-2015-0175 Exhibit A Tab 3 Schedule 1 page 28

28. Sussex also supports certain related costs and concludes that the landed cost analysis gas from NEXUS performed by the utilities is reasonable and results in competitive supplies being delivered to Dawn.[32]

B. Contract Diversity

29. The Appalachian basin is *"is one of the largest and fastest growing North American natural gas supply basins".*[33] Given the size and proximity of the basin to Ontario, it stands to reason that Union and Enbridge ought to have exposure to these supplies to ensure **diversity** among various basins.

30. Sussex also notes that that there will be supply **diversity** with access to new supplies via NEXUS:

> *NEXUS will provide a new entrant to supply the Ontario market with natural gas sourced from a different natural gas supply basin.*[34]

C. Risk Assessment

31. With respect to the risks that the utilities would be exposed to if they were to enter into their respective contract, Sussex analyzes these risks[35] and concludes that these risks are largely mitigated.

32. An additional risk that has not been highlighted is the risk and cost of unabsorbed demand charges (UDC), or the cost of incurring the fixed pipeline demand charges in the event that the gas commodity is not required. The NEXUS demand charges for Union are US$0.80/MMBtu.[36] This compares favourably with the demand charges of US$1.65/MMBtu and US$1.63/MMBtu for Alliance/Vector and TransCanada respectively.

D. Other Considerations

33. Much has been made about the benefit that the NEXUS pipeline will provide to other stakeholders. Union indicates that:

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[32] EB-2015-0175 Exhibit A Tab 3 Schedule 2 page 5
[33] EB-2015-0175, Exhibit A, Tab 3, Schedule 2, page 35
[34] EB-2015-0175, Exhibit A, Tab 3, Schedule 2, page 40
[35] EB-2015-0175 Exhibit A Tab 3 Schedule 2 page 6 Table 1.1
[36] EB-2015-0166 Exhibit A Schedule 5

Connecting Ontario to growing, affordably priced Appalachian shale gas will help to lower natural gas prices and enhance energy pricing stability in Ontario. Reduced price and reduced long term price volatility is a major benefit to all market participants, including power generation customers who rely on supply arrangements made at the Dawn Hub.[37]

34. Sussex also indicates that other stakeholders will benefit from the new NEXUS supply:

Ontario's direct purchase customers and those relying on the natural gas supply and price signals at the Dawn Hub can expect to benefit from a new competing pipeline and route for providing natural gas to the Dawn Hub and Ontario.[38]

35. APPrO acknowledges new supplies to the Dawn may bring certain benefits to other stakeholders at Dawn, including the potential for more supply options, increased liquidity, as well as the potential to have a positive influence on price. However in this case, these potential benefits have to be put in perspective:

   a. These transportation contracts are first and foremost being entered into to supply Appalachian based gas for the benefit of system sales customers.

   b. Union indicates that as a result of both NEXUS and Rover pipeline projects being developed that this will only increase the supply at Dawn by 0.3 PJ/d which represents 4.2% of the total Dawn supply.[39] This supply is not in the same scale as the planned full reversal of TransCanada's Niagara line to accommodate Niagara/Chippawa receipts at almost 1.2 PJ/d[40] in 2016, or the capacity offered by Vector when it was first constructed in 2000 (current capacity is 1.6 PJ/d).[41] Furthermore while there may be more capacity made available by Vector to Dawn, there is no evidence indicating the amount of firm capacity that shippers have committed to deliver to Dawn and even if these shippers have capacity to Dawn they will profit maximize and sell gas to

[37] EB-2015-0166 page 12
[38] EB-2015-0175 Exhibit A Tab 3 Schedule 2 page 40
[39] Transcript Volume 1 pages 50-51
[40] EB-2015-0166/EB-2015-0175 Exhibit J2.2 Attachment 1
[41] EB-2015-0166 Exhibit B.T1.Union.APPrO.2

the highest valued market between Chicago and Dawn.[42] Counterparties at Dawn seeking gas supplies will have to compete head to head on price with these other markets before supply can be secured.

c. Union clarified that if the potential benefits to power producers noted above are realized, they actually accrue to end use power customers, not to power producers.[43]

d. While there may be benefits to increased liquidity at Dawn, as Mr. Isherwood points out Dawn is already "*a very, very liquid hub*".[44] It is not clear what the tangible benefits the additional liquidity might bring. No party quantified the liquidity benefits that may occur.

e. Enbridge has already shifted a substantive part of its portfolio to Dawn. In comparing Enbridge's Dawn purchases in 2015 and 2018, they will increase their purchases from 4% to 46%[45] of their total portfolio. Similarly Union's Dawn/Other based purchases will increase from 5% in January 2015 to 22% in January 2018.[46] Union has further indicated that in the event that pre-approval of the cost consequences are not provided, some portion of the 150,000 Dth/d may also be acquired at Dawn. The combination of the utilities changing their portfolios to acquire more of their gas at Dawn from Western Canada or other longhaul sources increases the demand for gas at Dawn which will in fact increase prices for all parties and have a detrimental impact to these other stakeholders. Approving the cost consequences of the NEXUS contracts will provide for purchases at source and will not exacerbate this situation any further.

[42] Transcript pages 79-80
[43] Transcript Volume 1 pages 88-89
[44] Transcript Volume 1 page 38
[45] EB-2015-0175 Exhibit A Tab 3 Schedule 3 page 17 Figure 10
[46] EB-2015-0166 Exhibit A page 32 Figures 5-3 and 5-4

E. Exclusions from the appropriate level of costs that should be pre-approved.

36. NEXUS is contracting with DTE for existing pipeline capacity from Willow Run to the St. Clair interconnection with Union, as well as for capacity to the interconnect with Vector at Milford. This capacity will be used to facilitate the delivery of gas to Union and Enbridge for them to subsequently transport to Dawn. These are existing systems and there is no evidence that new infrastructure is being added to these systems. From the open season documents,[47] it appears that prospective shippers had the choice of delivery points. Union and Enbridge could have specified a Willow Run delivery point (the end of the Greenfield Portion) in their open season submissions and then separately contracted on the DTE system. If the utilities had entered into separate transportation contracts on DTE using existing infrastructure, it is unlikely that it would meet the Board's intent to support the development of new infrastructure. APPrO therefore recommends that the Board limit its pre-approval of costs associated with each of the Union and Enbridge NEXUS contracts to only the Greenfield Portion of the pipeline.

37. In addition, APPrO submits that the pre-approved costs associated with Union's NEXUS contract should also exclude any potentially increased rate associated with the capital cost tracking mechanism.

Conclusion

38. APPrO believes that the Board should pre-approve of the cost consequences of the transportation arrangements of Union and Enbridge for their respective transportation capacities on the Greenfield Portion of the NEXUS pipeline between Kensington and Willow Run. This pre-approval should exclude that portion of the NEXUS contract costs associated with the transportation capacity on the existing DTE system between Willow Run and the St. Clair interconnection in the case of Union's contract. The Union pre-approval

[47] EB-2015-0175, Exhibit I.T1.EGDI.BOMA.18, Attachment, page 1-3

should also exclude the potential 15% rate increase associated with the capital cost tracking mechanism.

39. In the case of Enbridge, the pre-approval should similarly exclude that portion of the NEXUS contract costs for transportation capacity on the existing DTE system between Willow Run and Milford and should apply only to the Greenfield Portion.

40. The 15 year costs associated with the Greenfield Portion of the Union contract with NEXUS, excluding any costs associated with the capital cost tracker, are approximately US$521.5 million.[48]The 15 year costs associated with the Greenfield Portion of the Enbridge contract are approximately US$391.5 million. [49]

41. In conclusion, APPrO submits that the Board should pre-approve (i) approximately US$521.5 million for Union and exclude the 15% rate increase associated with the capital cost tracking mechanism and (ii) approximately US$391.5 million for Enbridge.

[48] As calculated herein paragraph 13
[49] As calculated herein paragraph 16