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November 27, 2015

VIA E-MAIL

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge St.
Toronto, ON
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Dear Ms. Walli:

Re: Vulnerable Energy Consumers Coalition (VECC)
Final Submissions: EB-2015—0166/0175
Union Gas Limited/Enbridge Gas Distribution Inc.
Pre-Approval NEXUS contract

Please find enclosed the submissions of the Vulnerable Energy Consumers Coalition (VECC) in the above noted proceeding.

Yours truly,

Michael Janigan
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EB-2015-00166/0175

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 a 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

ON BEHALF OF THE

VULNERABLE ENERGY CONSUMERS COALITION (VECC)

November 27, 2015

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Vulnerable Energy Consumers Coalition (VECC) Final Argument

Union Gas Limited (EB-2015-0166)

And

Enbridge Gas Distribution Inc. (EB-2015-0175)

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1 The Application

1.1 Union Gas Limited ("Union") and Enbridge Gas Distribution Inc. ("Enbridge") seek pre-approval of the cost consequences of long-term gas transportation contracts with NEXUS Gas Transmission ("NEXUS").

1.2 Union seeks pre-approval of a 158,000 GJ/day of capacity on a pipeline to be built by NEXUS. The consequence is a liability of $47.7 (U.S.) million per year.

1.3 Enbridge seeks pre-approval for a contract for 15 years with a minimum capacity of 102 GJ/day. The liability of which is $28.1 million (U.S.) per year.

1.4 While the two Utilities have contracted separately the Board has determined to hear the matters together after a request of the Utilities. Inherent in this request and in the Board acceding to the request is that, notwithstanding there is no Board approved issues list, the salient issues to be determined by the Board are common to both applications. Therefore our submissions apply equally to both Utilities.

1.5 In our submission the Board, having set out its policy on pre-approval should rule on whether this application meets the standards of that policy. In the following section VECC presents what it believes are those standards.

2 Do the Applications meet the Policy Guidelines?

2.1 VECC looked at two sources to discern the meaning of the Board's policy with respect to pre-approval of these types of contracts. The Guidelines themselves provide little insight, but the Report of the Board proceeding is helpful. In its Draft Report the Board comes to a number of conclusions. We have highlighted those parts which are germane to this application[1].

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[1] Report of the Board - Draft Filing Guidelines for the Pre-Approval of Long-Term Natural Gas Supply and/or Upstream Transportation Contracts - EB-20018-0289, February 11, 2009, pages 3-5.

2.2 The Board's Conclusions

The Board agrees with stakeholders that long-term supply contracts may be justified in limited circumstances such as supporting the development of new natural gas infrastructure.

With regards to long-term transportation contracts, the Board notes that the natural gas utilities ("utilities") currently have a portfolio of contract lengths. This reflects an upstream transmitter's market requirement to have long-term contracts to support new large infrastructure investments while contracts for existing capacity are generally shorter. Also, **the Board is of the view that long-term transportation contracts may help to ensure an adequate natural gas supply in the Ontario market from a diverse portfolio of sources. This may increase supply reliability and reduce price volatility, which would benefit all market participants**. Consequently, long-term transportation contracts may be justified.

3.2 The Board's Conclusions

It is recognized that a utility may file an application to the Board at any time. However, in the case of long-term contracts, the Board agrees with stakeholders and concludes that a pre-approval process is appropriate for specific types of long-term contracts. The Board is of the view that filing guidelines need to be developed to assist a utility when it makes an application to the Board for the pre-approval of long-term contracts. **The Board believes that these applications should be limited to those that support the development of new natural gas infrastructure (e.g., new transportation facilities to access new natural gas supply sources)**. The Board does not believe that the pre-approval process for long-term contracts should be used for the utility's normal day-to-day contracting, renewals of existing contracts and other long-term contracts. These contracts should continue to be addressed in the utility's rate application.

The Board also agrees with stakeholders that the process should allow a utility to apply to the Board on a case-by-case basis to pre-approve the cost implications of the long-term contracts (as per section 36(2) of the *Ontario Energy Board Act, 1988*). The utility is to file its application with the Board either prior to contract execution, or after execution (with a condition precedent regarding Board approval), but before it incurs costs under the long-term contracts. The Board will approve the costs associated with these contracts, not the contracts themselves.

In addition, the Board believes that the pre-approval process for long-term contracts can be used at the discretion of the utility. **(Emphasis added)**

4.2 The Board's Conclusions

Based on stakeholders' comments, the Board believes that the utilities should file the following information:

- **Need, costs and benefits** – a description of the proposed project that includes need, costs, benefits (such as this project improves the security of supply and the diversity of supply sources) and timelines.

- **Cost effectiveness** in comparison to other alternatives – an assessment of the landed costs (supply costs + transportation costs including fuel costs) for the newly contracted capacity and/or gas supply to the landed costs of the possible alternatives.

- **Contract term, volume and services diversity** – an assessment on how this contract fits into the utility's overall transportation and natural gas supply portfolio.

- **Risk mitigation plan and risk allocation** – identification of all the risks (such as forecasting risks, construction and operational risks, and commercial risks1) and plans on how these risks are to be minimized and allocated between ratepayers, parties to the contract and/or shareholders.

- All relevant **contract parameters** such as transportation/supply provider, term, conditions of service, price, volume, and receipt and delivery points.

- **Affiliate relationships** – a description of the relationship between parties to the contract and the utility's parent company and/or affiliates.

- **Other Considerations** – retail competition impacts and potential impacts on existing transportation pipeline facilities in the market (in terms of Ontario customers).

2.2 The second source of guidance to the Board policy is EB-2010-0300/EB-2010-0333, two applications filed shortly after the Board issued the Guidelines. The relevant sections of that Decision are set out below[2]:

Board Findings
The Board finds that for the reasons provided below, the applied-for contracts do not qualify for pre-approval of their costs consequences.

It is the Board's view that its process for the pre-approval of the costs consequences of long-term transportation or supply contracts was intended to serve a very specific role in the development of natural gas infrastructure in the interests of Ontario consumers. Adoption of the process was recognition by the Board that as a matter of commercial reality the developers of natural gas infrastructure must in some circumstances require long-term commitments to support large infrastructure investments. With such assurances in hand the developer can proceed with the project with confidence and can secure financing on the strength of such commitments.

The Board recognized that the enrolment of regulated utilities for such long term arrangements would be a necessary and desirable element in new infrastructure development. It considered that in order to facilitate such developments it was reasonable to make provision for an extraordinary process wherein the costs consequences of such long term arrangements could be pre-approved. **This was so because regulated utilities whose sourcing decisions are typically and conventionally subject to ex post facto prudence review would be reluctant or unwilling to accept very significant long-term commitments without assurances of costs recovery. The result would be a frustration of demonstrably needed new natural gas infrastructure**.

[2] Decision and Order Eb-2010-0300/EB-2010-0333, January 27, 2011.

> As the 2009 Report of the Board and the LTC Filing Guidelines make clear, pre-approval is an unusual regulatory instrument reserved for cases where it is genuinely needed in order to enable infrastructure development. It is the Board's view that its process for the pre-approval of the costs consequences of long-term transportation or supply contracts was intended to serve a very specific role in the development of natural gas infrastructure in the interests of Ontario consumers. Adoption of the process was recognition by the Board that as a matter of commercial reality the developers of natural gas infrastructure must in some circumstances require long-term commitments to support large infrastructure investments. With such assurances in hand the developer can proceed with the project with confidence and can secure financing on the strength of such commitments.

2.3 These sections comprise what VECC believes are the salient principles of the Board's policy. Some of the Board findings are repetitive and others form the basis of evidence to be filed as opposed to criteria from which to judge that evidence. In VECC's submission one can reasonably discern from the Board's guidelines and decision a set of questions (issues) that should be answered in the affirmative prior in order to obtain approval. These are:

a) Is the proposal for new transportation infrastructure which is needed to serve Ontario?

b) Do the contracts support new transportation facilities to access new natural gas supply sources?

c) Do the contracts increase supply reliability and reduce price volatility?

d) Do the long-term transportation contracts help to ensure an adequate natural gas supply in the Ontario market from a diverse portfolio of sources?

e) Is the proposal cost effective in comparison to other alternatives as shown by an assessment of the landed costs for the newly contracted capacity and/or gas supply to the landed costs of the possible alternatives?

f) Have any affiliate relationships been adequately explained?

g) Have the proponents provided a risk mitigation plan and shown how these risks are to be minimized and allocated between ratepayers, parties to the contract and/or shareholders?

2.4 VECC has formed its submission around answering these questions.

3 Submissions

A. Is it a new pipeline?

3.1 Whereas for both Utilities a short piece of the transportation capacity is on existing pipelines the predominant part of this project is greenfield new pipeline. Therefore we agree with the Applicant's that EB-2011-0300/0333 is not determinative in this case.

3.2 NEXUS is in fact one of a number of greenfield projects under consideration to move gas from the Utica/Marcellus basin to markets in eastern North America as shown by the evidence of the Sussex Report.[3]

Table 2.1: Estimated Capital Expenditures

Project	Number of Pipeline Miles	Estimated Capital Expenditures (USD$)	Capital Expenditures per Mile (USD$000/Mile)
NEXUS	250	$2.0 billion	$8.00
Rover Pipeline[7]	474	$4.2 billion	$8.90
Constitution Pipeline[8]	125	$0.7 billion	$5.60
Northeast Energy Direct – Market Path[9]	188	$2.9 - $3.5 billion	$15.40 - $18.60

3.3 It is arguable that the Ontario Utilities should not be engaged in the development of the transportation market in any event. This argument has the appeal of consistency – no parties suggest that the Utilities should be developing natural gas wells which are equally important to Ontario gas consumers. The reasons for the distinction lies in the history of cross-country high cost pipelines that were built to bring natural gas from Western Canada to Eastern Canada. Environmental costs, political risk and other factors mean that high cost is still a characteristic of transportation pipelines, even relatively short lines like NEXUS.

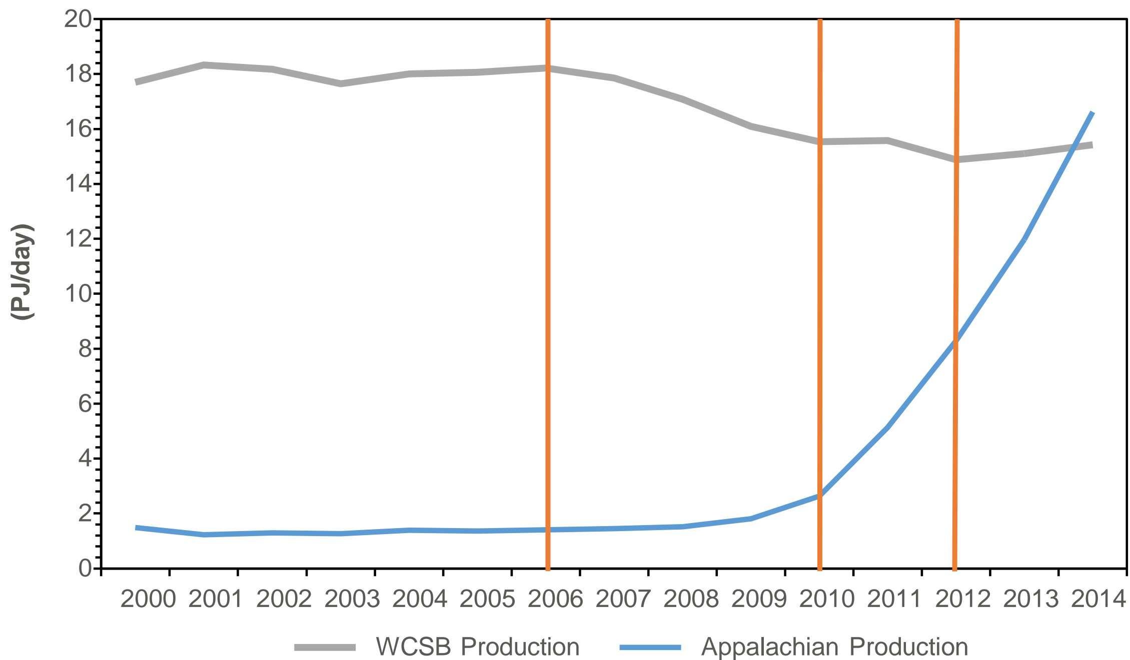
[3] Union Exhibit A, Schedule 3, pg.9

3.4 In any event the Board has already determined that it will consider requests for pre-approval of contracts which underpin new greenfield pipelines. In VECC's submission the project meets the criteria of being new infrastructure.

B. Does it access new supply?

3.5 In our submissions arguments which try to refine the term "frontier gas" are misguided. The facts are clear. The Utica/Marcellus basin gas supply market has grown from fundamentally nothing in 2008 to become a major supplier for the Canadian and U.S. eastern consumer markets. The graph below provided by the Sussex Report shows this clearly[4].

Figure 3.8: Comparison of Appalachian and WCSB Production (2000-2014)



3.6 Had this same supply revolution occurred from LNG facilities built on the North American northeast coast one wonders whether some of the same debates heard

[4] Union EB-2015-0166 Exhibit A, Schedule 3, page 22

in this proceeding would have occurred? Is the Utica/Marcellus supply a new source of supply as contemplated by the Guidelines? In our submission the clear answer is yes.

3.7 We also note that the evidence provided by the Sussex Reports speaks to the declining source of natural gas from the WCSB. We think it important that the Board consider both the fact that the project serves to deliver gas from a new supply and to the fact that the traditional supply source and transportation markets from Western Canada are also fundamentally changing. That is the Board should consider both the question of the new and the old supply sources in assessing the issue of pre-approval.

C. <u>Supply reliability and reduction in price volatility</u>

3.8 This is one of the most difficult questions to answer as the evidence is based on forecasts and projected scenarios. To understand how difficult it is to accurately predict the future of natural gas prices the Board might wish to compare the 2010 Natural Gas Market Review Report prepared by ICF International for the Board in 2010 with the Sussex Report in this application. Or the Board might wish to consider that it was not too long ago in which forecasts were that eastern seaboard LNG facilities would be needed to fill the declining source of Western North America gas. All of which is to say, that in VECC's submission the Board should be judicious in weighing the evidence with respect to landed costs of natural gas.

3.9 The Board's Guidelines are recognition of the fact that as an importer of natural gas Ontario prices are the combination of both supply of the commodity and supply of the transportation capacity. In the simply supply and demand model higher prices reduce demand until it matches the capacity of the pipeline. There are a currently a number of pipelines which serve Ontario and which can deliver gas from the U.S. Northeast. There is no evidence that Ontario natural gas consumers would face a shortage of supply in the absence of this proposal. Nor is

there compelling evidence of that natural gas prices would increase inordinately in the absence of the NEXUS pipeline. Conversely, the economic truism is that new capacity will have a positive effect gas prices.

3.10 It is clear that there is a demand for new capacity from the Utica/Marcellus basin into Ontario. This is evidenced by the other pipeline projects and by the activity currently going on to move natural gas from the U.S. Northeast shale basin to Ontario through the reversal of pipeline flows through Niagara/Chippewa and potentially the Iroquois Gas Transmission System.

3.11 The question is not whether there is a need for new projects to bring gas to Ontario from the U.S. Northeast. Clearly the market has determined that needs to happen. Rather the question is whether NEXUS is essential to fulfilling that need.

3.12 In comparison to no new pipeline, NEXUS would certainly contribute to an increase in supply at Dawn. Whether NEXUS in and of itself would lead to less price volatility of gas for Ontario gas consumers is less certain. Natural gas prices are affected by a number of other factors, most notably demand, but also alternative energy prices, Canadian-U.S. exchange rates and environmental regulations. NEXUS will make up only a small part of the future calculation of natural gas prices in Ontario.

3.13 In VECC's submission, while the impact may be slight, the additional capacity provided by NEXUS will have a positive impact on gas supply market in Ontario. However, we do not think the materiality of that impact can be accurately forecast.

D. <u>Diversity of Utility Gas Supply Portfolio</u>

3.14 In VECC's submission both Applicants have made a convincing case for NEXUS as part of diversity of their gas supply portfolio. NEXUS offers the Utilities access to a growing supply basin at the same time supply and transportation from the WCSB is declining.

3.15 Different parties will have different views as to the risk inherent in any supply plan.

However, the principle of diversification of the portfolio of gas supply and transportation should not be controversial.

3.16 The pre-approval of these contracts would provide both Union and Enbridge with source access to supplies in the Utica/Marcellus shale basin. As such it is akin to the long-haul contracts these Utilities have traditionally held with TCPL to access the WCSB.

3.17 In our submission the contracting of capacity to the Utica/Marcellus shale is a prudent part of a natural gas supply plan. It is also the most compelling reason to approve the Applications.

E. Cost Effective

3.18 Both Union and Enbridge provided evidence of the benefit of entering into the long-term contracts on NEXUS. Union as an anchor shipper receives a discounted rate. Enbridge will receive the benefit of “Most Favoured Nations” status and the option of a preferred reservation.

3.19 In VECC’s submission pre-approval is clearly cost effective for Union which has negotiated a favourable rate as an anchor shipper. In fact, the Board might wish to consider what decision it would have if in the absence of pre-approval Union contracts on NEXUS in the future and at higher rates.

3.20 While the contracts are less obviously cost effective for Enbridge, that Utility has contracted for a smaller amount of capacity. In VECC’s submission the applications meet the Board’s test that the pre-approval be cost effective.

F. Affiliate Relationships

3.21 In VECC’s submission the inclusion of the need to provide evidence of affiliate relationships in any filing for pre-approval was conscious and important. In putting in this requirement the Board was making the Utilities aware that it would scrutinize carefully arrangements which serve to benefit of the shareholders of the larger corporate entities. In VECC’s submission the proposal of Union and

Enbridge benefit affiliates of both Utilities.

3.22 Enbridge is forthright in its argument to protect its affiliate's investment stating "*Importantly, though, NEXUS will also assure that substantial Vector capacity continues to be used for deliveries to the Dawn Hub. At present, with decontracting related to Alliance, there is a risk of lower deliveries from Chicago on Vector".*[5]

3.23 In our view there is nothing untoward or unreasonable in Enbridge contracting on the Vector system.

3.24 Union's parent, Spectra Energy will clearly benefit from the building of the NEXUS pipeline. As well the addition of incremental capacity to the Dawn Hub has benefits to Union and its parent company. This is not wrong per se and it is not unreasonable for commercial companies to engage in commercial activities. We found no evidence that the negotiated rate was not at arms-length and no reason for the Board to deny Union's Application on the basis of its affiliated relation with NEXUS/Spectra Energy.

3.25 In VECC's submission the fact that there are affiliate relationships as part of the contracting should not in and of itself be of concern. We do think however, the benefits provided through these relationships should be considered as part of risk mitigation.

G. <u>Risk Mitigation</u>

3.26 Risk Mitigation is the one area in which VECC believes the application fails. It is clear from the Board's guidelines that risk mitigation was how risks are to be "*minimized and allocated between ratepayers, parties to the contract and/or shareholders*".

3.27 In these Applications risk has mostly been discussed either as the financial risk to the Utilities (i.e. their shareholders) or the risk of access to the supply of shale gas.

[5] Enbridge Argument in Chief pg. 11

The Applications are relatively silent on the risk to in-franchise rate payers should situations change and the 15 year term of the contract lead to immitigable costs.

3.28 In our submission the absence of sharing of the risk of holding long-term contracts as between shareholders and ratepayers is particularly disingenuous on the part of Union. Clearly Union's parent Spectra Energy benefits by the construction of NEXUS and long-term contracting on that system. Union also directly benefits. By their own account NEXUS is a component in enhancing liquidity at the Dawn Hub which will provide shareholder benefits.

3.29 In VECC's submission the Board should consider how to share the risk of long-term contracting. In our view allowing the cost-consequences of the same capacity as contracted by Enbridge would be a fair allocation of risk among Union's shareholder and its ratepayer.

3.30 In VECC's submission the Board should approve the Applications only after addressing the allocation of risk for the contract so as to limit risk to ratepayers. It could do this by either approving a smaller volume or shorter period for pre-approval.

4 Future of the Guidelines

4.1 Should the Board decline to approve the Applications then in VECC's submission serious consideration should be given the continuation of the pre-approval process. By this we do not mean to add additional endorsement to the proposal. Our conclusion is summarized in paragraph 3.30 above.

4.2 The decline of easily accessible gas from the WCSB and the recent developments for the extraction of shale gas is a fundamental shift in natural gas supply in North America. Other than the future use/need of LNG it is difficult to imagine any future circumstance which would meet the requirements of the Board's Guidelines.

5 Reasonably Incurred Costs

5.1 VECC submits that its participation in this proceeding has been focused and

responsible. Accordingly, VECC requests an award of costs in the amount of 100% of its reasonably-incurred fees and disbursements.

ALL OF WHICH IS RESPECFULLY SUBMITTED

M. Janigan
Counsel for VECC