November 27, 2015

Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
P.O. Box 2319
Toronto, Ontario
M4P 1E4

Dear Ms. Walli:

Re: EB-2015-0166/0175 – Union Gas Limited/Enbridge Gas Distribution Inc. – NEXUS Contracts – Pre-Approval

Please find, attached, the Final Argument of the Consumers Council of Canada in the above-referenced proceeding. We apologize for this late filing.

Yours truly,

Julie E. Girvan

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CC: EGD, Regulatory
Union Gas, Regulatory
All parties

FINAL SUBMISSIONS OF THE CONSUMERS COUNCIL OF CANADA

UNION GAS LIMITED EB-2015-0166
ENBRIDGE GAS DISTRIBUTION INC. EB-2015-0175

PRE-APPROVAL OF THE COST CONSEQUENCES OF THE NEXUS CONTRACTS

Introduction:

On June 5, 2015, Enbridge Gas Distribution Inc. ("EGD") applied to the Ontario Energy Board ("OEB" or "Board") for approval for an Order or Orders pre-approving the cost consequences associated with a 15-year long-term contract for service on the NEXUS Gas Transmission ('NEXUS") pipeline, commencing November 1, 2017.

On May 28, 2015, Union Gas Limited ("Union") applied to the OEB for approval of the cost consequences associated with its 15-year contract for long-term transportation capacity with NEXUS commencing November 1, 2017.

Both Applications are being made pursuant to the Board's "Filing Guidelines for Pre-Approval of Long-Term Natural Gas Supply and/or Upstream Transportation Contracts", dated April 23, 2009.

These are the submissions of Consumers Council of Canada ("Council") regarding Union and EGD's requests, as set out in their applications.

Submissions:

The NEXUS pipeline project involves the construction of greenfield pipeline and the use of existing infrastructure to transport supplies of Appalachian shale gas production, including Marcellus and Utica production to customers in Ohio, Michigan and the Dawn Hub in Ontario. The project, with an estimated cost of $2.09 billion (USD), is being jointly developed by DTE Energy and Spectra Energy Corp. Union and EGD have entered into Precedent Agreements with NEXUS for transportation capacity on the pipeline for a 15-year period commencing November 1, 2017. OEB pre-approval is a condition precedent.

Pre-approval of long-term natural gas supply or transportation contracts has never been granted in Ontario. The Board's policy as we understand it was put in place, for very limited circumstances regarding the development of new natural gas infrastructure. In 2010, EGD and Union applied for pre-approval of 10-year contracts with TransCanada Pipelines Limited from the Marcellus basin to Niagara. In that case the Board concluded:

> There is no basis for the Board to conclude that the contracts for which pre-approval has been sought provide access to new natural gas supply that would not be accessible if pre-approval is not granted.
>
> To be clear, the Board has stated as a matter of policy that there is a role for long-term transportation contracts within the utility transportation portfolio. The Board also identified the specific type of long-term contract where pre-approval of the cost consequences of the contract may be appropriate. In the normal course, the prudence of the cost associated with a long-term contract is appropriately addressed in the utility's rate application. Pre-approval of the cost consequences of a long-term transportation contract forecloses the opportunity for a future prudence review. It is a departure from the Board's conventional approach and therefore must meet a high standard. There must be a compelling case that without the reallocation of risk to the ratepayer from the shareholder arising from pre-approval, new natural gas transportation infrastructure would not be constructed and new natural gas supplies would remain beyond the reach of the market. The Applicants have not met that standard. (EB-2010-0300/EB-2010-0333, Decision and Order, January 27, 2011, p. 10)

If the Board's test is whether, absent the reallocation of risk to the ratepayers new transportation infrastructure would not be constructed, and new natural gas supplies would remain beyond the reach of the market, then these applications should not qualify for pre-approval. Gas supplies from the Appalachian Basin are already accessible in Ontario. In addition, other pipeline projects are planned to bring Appalachian gas supply to existing markets.

Union and EGD have both argued that these contracts should be pre-approved as they support the development of new natural gas infrastructure, as contemplated by the Filing Guidelines. (Union/Argument-in-Chief, p. 2, EGD/Argument-in-Chief, p. 2)

Union's further argues that pre-approval should be granted for the following reasons:

- The NEXUS contract is needed to replace the declining and more costly flows from the Western Canada Sedimentary Basin;
- Corresponding to the transfer of cost responsibility to the ratepayers are the significant benefits that arise from the contract if pre-approval is granted. Union is entering into the contract on behalf of its customers for the benefit of customers;
- As a prudent counterparty and recognizing the cost consequences of pre-approval, Union has negotiated a very favourable agreement which protects ratepayers by fully mitigating risks related to project capital costs and resulting rate impacts, project delays and potential for more favourable terms being negotiated by similarly situated shippers;
- A denial of pre-approval could leave ratepayers without the benefits arising from the NEXUS pipeline and expose ratepayers to the incalculable risk of whether alternative pipeline arrangement s would permit access to the Appalachian Basin at a comparable quantity or cost (Union/AIC, pp. 2-3).

EGD has argued for pre-approval for the following reasons:

- It is clear the NEXUS contracts creates significant benefits for EGD's ratepayers (particularly system gas customers);
- EGD's gas supply plan will be enhanced by the NEXUS contract, in terms of diversity, security of supply and reliability;
- The costs associated with the arrangement have been managed and mitigated;
- Pre-approval of the cost consequences of the NEXUS contract will allow EGD to make the significant long-term commitment that is required to ensure the benefits of the project will be realized by EGD's customers (EGD/AIC p. 3).

The Council does not take issue with the fact that there could well be benefits flowing to Union and EGD's customers arising from these contracts. These benefits could include:

- Enhanced diversity of supply in Ontario through access to multiple supply basins;
- Enhanced security of supply; and
- Minimizing price volatility over the term of the contracts.

If Union and EGD, however, are of the view that contracting on NEXUS is prudent and in the interests of their customers pre-approval should not be required. Union and EGD must continually evaluate their gas supply planning options. This would include an evaluation of other options relative to contracting on NEXUS. The Board's normal practice of assessing prudence should be maintained in this case and the onus should be on the utilities to demonstrate prudence whether they contract on NEXUS or choose other options.

The North American natural gas markets have gone through significant changes over the past several years. There is no way to know at this time how those markets will be structured in the future. Demand can change and supply options can change. To the extent that happens the merits of the NEXUS option could change. The Council has concerns that to lock in this option on a pre-approved basis for the next 15 years, given the magnitude of the contract amounts, would be placing an unnecessary risk on Union and EGD's ratepayers.

Union's Precedent Agreement amounts to a cost of approximately $715 (USD) million over the 15-year contract term (Ex. A/p. 3). EGD's Precedent Agreement contemplates a cost commitment of what could amount to $562 million (USD) over the term of the agreement (Ex. A/T3/S1/p. 20). From the Council's perspective to shift all of these costs on Union and EGD's ratepayers for the next 15 years is a risk that is not warranted. If the Board is inclined to accept that risk then there must be a clear demonstration that the risk is outweighed by the benefits associated with the contracts.